

# OSDBU UPDATE

Department of Veterans Affairs

November/December 1998

## Notes from Scott

This is a special holiday issue of OSDBU Update. In this issue, we recognize the contributions of Native Americans to our culture and business lives. In early December, I met with tribal leaders in Albuquerque, NM, to explore the expected impact of the new Historically Underutilized Business (HUB) Zone Empowerment Contracting Program. While this program is not yet effective, it is intended to relieve areas experiencing high unemployment by permitting sole source awards and HUB Zone Small Business Set-asides in designated areas. All tribal lands are designated as HUB Zone areas. However, a concern of the Native American community is that, because 8(a) requirements are a higher priority source, the HUB Zone Act may have limited benefit on the reservations. We will keep you posted on the implementation status of the HUB Zone Empowerment Contracting Program. Currently, we are waiting for the governing FAR coverage to be issued.

Also this month, we are introducing the first of the Q&A series on the Small Disadvantaged Business Participation Contracting Program. I'd like to recognize the excellent work of **Kandi Tahmoush, Tom Cooper, Sandi Nelson, Mike Cunningham, Kristen Palmer, Lyndia Glasgow, Frank Sallustio, Wafi Rains,**

**Warren Ector**, and most especially, **Ramona Jones**, for organizing the recent conference call with SBA's Dean Koppel on this topic. That discussion resulted in this month's column.

We are highlighting a very important topic in this issue - consolidating requirements and the Anti-Bundling rules. We've discussed this in the past, but review is always timely. I know that after the first of the year many contracting activities will begin planning their strategies for FY 2000. I'd like to thank in advance those facilities who have already submitted their FY 1999 Advance Procurement Plans to OSDBU. If you have not yet done so, your OSDBU analyst will soon be calling you to see when we will receive your plan.

Finally, from our staff in OSDBU to all the VA family, a safe and happy holiday season to you all.

Scott



## INSIDE THIS ISSUE

- 2 SDB Participation Program Questions and Answers
- 4 North American Industrial Classification System (NAICS)
- 4 Consolidated Contracts and Partial Small Business Set-Asides

**SMALL BUSINESS  
BUILDS AMERICA!**

Small Disadvantaged Business Participation  
Program  
Questions and Answers

Here are some of the questions raised to date about the SDB program. Remember, small business set-asides and 8(a) requirements are not subject to this program.

1. **In construction contracts, does the place of performance or the contractor's place of business determine applicability of the program?**

The contractor's place of business governs.

2. **Where can I find a list of the covered Standard Industrial Classification Codes?**

There are two places to look. We suggest accessing the list on SBA's web site, <http://www.sba.gov/sdb/>

They were also published in the June 30 Federal Register.

3. **When contracting for commercial items, at what dollar value does the SDB Participation program apply?**

Actions of \$100,000 or less are exempt from the SDB Participation Program Price Evaluation Adjustment procedures.

4. **Is the use of the Price Evaluation Adjustment (PEA) intended only for competitive acquisitions where price is the determining factor?**

No. The PEA is the only procurement mechanism available in sealed bidding. It may also be used in negotiations. Beginning in January 1999, an SDB offeror may elect either the PEA or the technical evaluation factor credit. This decision by the offeror will weigh heavily upon how the award factors are balanced.

5. **I'm making a best value award. Does this make a difference?**

No. The mechanisms will be applied in best value solicitations.

6. **When I draft my Commerce Business Daily notice of the procurement, do I need to include any special language about the SDB Participation Program?**

No. However, we do recommend you always include the Standard Industrial Classification Code in your notice (this is required for small business set-asides, but optional in full and open competitions.) When you develop your solicitation, you will need to include the SIC code there and will need to include the appropriate SDB Participation Program notices and clauses.

7. **I understand the maximum percentage for the PEA is 10%. Is this the maximum percentage for a technical evaluation factor as well?**

There is no maximum percentage for the evaluation factor. SBA recommends a weight of 20%.

8. **Is a Contracting Officer supposed to insert both the PEA and the Evaluation Factor or Subfactor for SDB Concerns clauses when the solicitation is a negotiated acquisition expected to exceed \$500,000 (\$1,000,000 for construction)? If so, it looks like the SDB that accepts the PEA cannot get credit under the evaluation factor.**

Yes, insert both clauses. You are correct, an SDB can get credit only for a PEA or for the evaluation factor. The SDB cannot receive credit under both mechanisms.

9. **Why would an SDB waive the PEA and go for an evaluation credit?**

The Limitations on Subcontracting clause applies when using the PEA. This means the SDB must do 50% of the work with its own employees. If the firm waives the PEA and elects to take the evaluation factor credit, there is no such requirement.



## American Indian Heritage Month

by Sherra Berutto

The month of November has been designated as American Indian Heritage Month. This year's theme is "The Voice of the Indigenous People". According to an article in The Washington Post, many tribes are making the move to diversity. "The Indian Gaming Regulatory Act of 1988 triggered a boom in reservation casinos that generates an estimated \$6 billion a year for the one-third of the nation's 554 tribes that operate some form of gaming." But what is less known is that a growing number of tribes across the nation are starting to move beyond casinos to land ownership and business enterprises. The following are just examples of the varied areas into which these businesses have diversified: graphic design; steel products; office products; publications; AE; construction; frozen yogurt and medical supplies. "A new generation of Native American entrepreneurs is emerging that regards gambling not as a bonanza, but as a means to an end. And the end, for them, is a diversified tribal economy that can improve the quality of life not only for an Indian nation's members, but also for the community in which the tribes people live."

## CANADIANS SELLING TO THE UNITED STATES

By Julie McCann

On October 29<sup>th</sup>, at the invitation of the Canadian Consulate General, Victor E. Heinrich, Logistics Manager/Chief, Finance of the VA Western New York Healthcare System journeyed to Toronto to participate along with the Food & Drug Administration in a seminar called "Exporting Medical Products into the United States". The audience included vendors producing such varied products as hospital headwall units, radio frequency generators, rehab exercise equipment and prescription packaging.

The presentation revolved around the “Drivers of the VA”, such as the Prescription for Change and Journey for Change as well as demographics. Victor explained to the audience that we are looking for partners to help us reduce our costs by thirty percent while increasing our number of unique veterans by twenty percent and increasing non-appropriated revenues to ten percent of our total budget all by the end of fiscal year 2002. Vendors were advised to contact the National Acquisition Center, and VISN Logistics

representatives. In preparing for the presentation, Victor went to all the usual suspects to gather pamphlets and brochures. As is turned out, all was available via the Internet. This point was brought home to the audience. From the Commerce Business Daily to [www.va.gov](http://www.va.gov) to [www.gsa.gov](http://www.gsa.gov), it's all there.

It was interesting to hear, during other discussions, advice to start with a specific region or part of the United States as our market is so large. Victor was also able to share information concerning the Association for Healthcare Resources in Material Management including membership, Efficient Healthcare Consumer Response, and Activity Based Costing.

## North American Industrial Classification System (NAICS)

by Sherra Berutto

In response to a question from the field, the NAICS will replace the SIC codes (FAR Part 19) now used to identify each procurement. The NAICS will use a six (6) number system providing a detailed definition allowing the VA more latitude in selecting the correct code and contractors the ability to identify those solicitations they are actually qualified to bid. The new codes will need to be placed on SF 129's and the ProNet system. The VA is working closely with FPDC due to the changes required in the FPDS reporting system. Contractors will need to be briefed on the new system before it begins effective in FY 2000. As additional information is provided by SBA, we will keep you informed.

## Consolidated Contracts and Partial Small Business Set-Asides

by Lisa Russell

Public Law 105-135, the Small Business Reauthorization Act of 1997, addressed, among other things, contract bundling. Although regulations have not been promulgated yet on this section, it is safe to say that this Public Law amplifies the current FAR coverage, and therefore merits attention now.

The current coverage in FAR 19.202, Specific Policies, requires the contracting officer to:

- 1) Divide acquisitions, except construction, into reasonably small lots to permit offers on quantities less than the total requirements,
- 2) If practicable, plan acquisitions such that more than one small business can perform the work,
- 3) Ensure realistic delivery schedules,
- 4) Include on the mailing list all established and potential small business sources,
- 5) Make every reasonable effort to find additional small business concerns, including contacting the SBA,
- 6) Publicize solicitations and contract awards in the Commerce Business Daily,
- 7) Allow the maximum amount of time practicable for submission of offers,
- 8) Furnish specifications, plans, and drawings with solicitations, or furnish information as to where they may be obtained,
- 9) Send solicitations to all small business concerns on the solicitation mailing list or a pro rata number if less than a complete list is used, and
- 10) Provide to any small business concern, upon its request, a copy of the solicitation and other relevant information even if the CBD announcement states the solicitation is available on a first come-first served basis.

If a contracting officer intends to consolidate requirements and use full and open solicitation procedures, there is an additional step that must be taken. The contracting officer is required to provide a copy of the solicitation to the Small Business Administration Procurement Center Representative at least *30 days prior to the issuance of the solicitation* if the requirements are currently being provided by a small business and are of a magnitude that makes it unlikely that small businesses can compete as prime contractors. This includes solicitations for construction that seek to package or consolidate discrete construction projects into a magnitude that makes it unlikely that small businesses can compete as prime contractors. The contracting officer also has to include a statement explaining why (1) the proposed acquisition cannot be divided into reasonably small lots; (2) delivery schedules cannot be established on a realistic basis so that small businesses can compete as prime contractors; (3) it cannot be structured so that small business can compete for the prime contract, or (4) consolidated construction projects cannot be acquired as separate discrete projects.

Public Law 105-135 uses the terms "bundling" and "consolidated" interchangeably because the two terms essentially have the same meaning. The law defines bundling of contract requirements as, "...consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business concern due to - (A) the diversity, size, or specialized nature of the elements of the performance specified; (B) the aggregate dollar value of the anticipated award; (C)

the geographical dispersion of the contract performance sites; or (D) any combination of the factors described in [paragraphs] (A), (B), and (C)."

"Separate smaller contract" is a key phrase. The law defines separate smaller contract as, "...a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns." This means that if the contract had been previously performed by a large business but was suitable for award to a small business, then it falls under the purview of contract bundling. Stating that it was awarded to only large businesses in the past is not, in itself, sufficient justification for bundling requirements beyond the capacity of small businesses.

Market research has always been required, as evidenced by FAR 19.202-2(b), Locating small business sources. However, the new law tightens the requirements for market research and emphasizes the development of a justification to support the bundling of requirements. Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, the head of an agency must conduct market research to determine whether consolidation of the requirements is necessary and justified. This market research requirement will probably be delegated to the contracting officer. For consolidation to be necessary and justified, the Federal Government must derive from the consolidation measurably substantial benefits, which may include any combination of benefits. Benefits can be described in terms of cost savings, quality improvements, reduction in acquisition cycle times, better terms and conditions, or any other benefits. However, the law specifically states, "The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the cost savings are expected to be substantial in relation to the dollar value of the procurement requirements to be consolidated." For example, if the procurement is for services for several sites and each site has an individual placing orders for their respective site, administrative costs to the Government are not reduced by having only one vendor to call.

If it is determined that a proposed acquisition strategy involves a substantial bundling of contract requirements, the proposed strategy shall identify specifically the benefits anticipated to be derived from the bundling and provide an assessment of the specific impediments to participation by small businesses as prime contractors. The proposed strategy must also specify actions designed to maximize small business participation as subcontractors and include a specific determination that the anticipated benefits of the proposed bundled

General Accounting Office made clear in their decision on the protest by Safety Storage, Inc., that they will sustain protests by small businesses where the contracting officer used full and open solicitation procedures after failing to investigate reasonably whether the procurement could be set aside for exclusive small business participation. The GAO decision states, "...While the use of any particular method of assessing the availability of small businesses is not required, and measures such as prior procurement history, market surveys and/or advice from the agency's small business specialist and technical personnel may all constitute adequate grounds for a contracting officer's decision not to set aside a procurement,...the assessment must be based on sufficient facts so as to establish its reasonableness." A decision to proceed with an unrestricted procurement based on incomplete information, unsupported assertions regarding complexity, and insufficient efforts to ascertain small business capability to perform the contract is a poor decision and will likely not be supported by GAO in the event of a protest.

If contract requirements are bundled and the solicitation is issued as a request for proposal or request for quotations with evaluation factors, it must contain evaluation factors for small business participation as subcontractors. Under the past performance factor there must also be a subfactor that is based on the extent to which the offeror attained applicable goals for small business participation in previous contracts.

Use caution when selecting the Standard Industrial Classification code for the procurement. Selection of an incorrect SIC code could inappropriately allow a large business to participate in a small business set-aside. If the procurement contains a mixture of supplies and services, with most of the contract dollars being in the service industry, then select the SIC code for services. The SIC codes for services have a size standard expressed in terms of dollars. If a SIC code for manufacturing (supplies) is selected, it is generally expressed in terms of number of employees. FAR 19.102, Size standards, requires that the selection of the SIC code that best describes the principal nature of the product or service. If more than one SIC code applies, then the selection should be based upon the industry accounting for the greatest percentage of the estimated contract price. It is possible for a company to be considered a large business under a SIC code for services and a small business under a SIC code for manufacturing.

If issuing a solicitation for consolidated requirements, consider breaking out part of the procurement for a small business set-aside if a total small business set-aside is not appropriate. This breaking out is appropriate if the

contract requirements are severable into two or more economic production runs or reasonable lots; one or more small business concerns are expected to have the technical competence and capacity to satisfy the set-aside portion at a fair market price; and the acquisition is not subject to simplified acquisition procedures. There are no hard and fast rules on the format for establishing the parameters of the set-aside portion. However, the set-aside portion and the non-set-aside portion should each consist of an economic production run or reasonable lot and have terms and a delivery schedule comparable to the other. If performing services at various locations, the contracting officer has the flexibility to state the set-aside portion in number of sites, percent of contract awards, percent of contract dollars, or other methods, as long as it is clear how the evaluation shall be performed. For example, if soliciting for services for five medical centers, the contracting officer may state that three of the five sites are set-aside for small business participation without specifying which of the three sites are set-aside. Remember, though, that these are prime contract awards being made to small businesses. Some large businesses may wrongly claim they can satisfy the small business set-aside portion by subcontracting that portion to small businesses.

Although there is no requirement in the FAR for a contracting officer to perform certain functions, sometimes it is in the Government's best interest if a contracting officer takes an extra step. Many small businesses are not particularly savvy about doing business on a larger scale. They may currently be the incumbent at all the sites, but are accustomed to pricing their offer for one site at a time since that was how it was solicited in the past. Offering a quantity discount may never have occurred to them. It benefits the Government if a contracting officer voluntarily tells the small businesses that they should consider offering a quantity discount if awarded more than one site.

There is a big emphasis now on consolidating requirements within a VISN. Sometimes consolidating requirements can save money. However, it is also important to consider the future impact of consolidation on competition. If consolidation proceeds without considering the interests of small businesses and results in only one or two large businesses submitting offers, you may find that in a very short period of time you have no competition and are not getting good prices. And those small businesses may have gone out of business in the meantime, leaving you with no place else to go.







## Des Moines Vocational Rehabilitation

by Ilene Waggoner

GLS Enterprises, named from the initials of the owner, Gary L. Schroeder, started up in Knoxville three years ago, and gave the town a new desktop publishing business.

Gary, who is a former Navy diver, having served in Vietnam is now in business for himself, and likes it that way.

Gary was planning on being a career military person. However, after the Vietnam experience Gary had a difficult time readjusting to being back in the civilian world. Gary left the military and entered college at Peru State College in Nebraska. He found however, that the adjustment to college life aggravated his disability. He consequently decided to leave college.

However, during his two years at Peru College he assisted with various school publications, becoming familiar with art and layout. Gary found that he enjoyed this field very much, he could work around his disability, resting when the need arose.

"Everybody's got a knack for his own thing," he said. If you're good at it and are creative, you can do something nobody else can do. And that is the philosophy behind Gary's desk top publishing business.

The Vocational Rehabilitation Office in Des Moines, Iowa, is very supportive of those disabled veterans pursuing owning their own business. They have found that many of the vets who have had difficulty in finding or keeping employment do very well in an environment where they can call the shots.

The Vocational Rehabilitation Office supported Gary in his efforts to become self employed. They helped him finance the purchase of his equipment.

Gary works out of his home which keeps his overhead low. He has many calls for business cards, certificates, custom-made wedding invitations, and business forms. Bigger companies have large overhead and expensive machines, making small jobs unprofitable. With small machines, Gary can produce his work at a profit.

"I can work at my own pace and rest when I need to," he said. He doesn't want the business to get bigger than he can manage comfortably. Therefore, he depends upon word of mouth for advertising. "People here in this area know me, and they say I do a good job."

"VocRehab was a very positive experience," Gary said. "You have to want to do something, keep your mind busy, and VocRehab supported me in that."

Gary knows that it is important to give something back to the community. In the past Gary has worked at the Vet Center in Charles City, and he now helps other veterans at the VocRehab center in Knoxville.

Gary's main concern is making his business run smoothly and doing it better than his competition.

The Office of Small and Disadvantaged Business Utilization (OSDBU) wishes to recognize the Des Moines, Iowa Vocation Rehabilitation Office for the outstanding support of veteran entrepreneurship. Des Moines VocRehab not only supports the veteran just starting up his business, but also believes in offering support two to three years after the initial startup of the business. The Des Moines Vocational Rehabilitation office believes in helping the veteran entrepreneur learn about running a small business and doing things that will ensure that the veteran remains in business.



HAPPY HOLIDAYS